

ALLAHABAD HIGH COURT

Nandan Singh Bhist

Vs.

State of U.P

Criminal Misc. Case No. 3358 of 1963

(B. Dayal and S.D. Khare, JJ.)

06.12.1963

JUDGMENT

B. Dayal, J.

1. This is an application under Section 491 Criminal Procedure Code, read with Article 226 of the Constitution of India alleging that the detention of the applicant under Rule 30(1)(b) of the Defence of India Rules, 1962 is illegal. Several grounds were taken when the petition was presented but many of them have now become without any force because of the decision, of the Supreme Court find other circumstances. The only contention pressed by learned counsel for the applicant was that the case of the applicant was not reviewed according to the provisions of Rule 30A(9) of the same Rules.

2. The facts which are necessary for the decision of this point are that the detention order against the applicant was passed by the State Government on the 9th of November, 1962. The applicant was, to the enforcement of that order, arrested on the 10th of November, 1962. The applicant made a representation, against his detention and on the 31st of January, 1963 this representation was rejected. While rejecting this representation the whole case of the applicant was reconsidered and a decision taken that his detention order ought to be continued. The communication to the applicant merely stated that his representation had been rejected. Subsequently his case was again, reviewed and again a decision was taken that his detention was to be continued. By a communication dated the 29th of July, 1963 information was sent to the applicant. In this situation there was no information sent to the applicant stating that on the 31st of January, 1963, his case had been reviewed and a decision taken that this detention order was to continue. He was, therefore, unaware of the review of his case

on the 31st of January, 1953. In these circumstances a ground was taken that the review of his case having taken piece more than six months after the date of his detention, the provisions of sub-rule (9) of Rule 30A had not been complied with and the detention was illegal. Sub-rule (9) aforesaid is as follows :

"Every detention order made by the Central Government or the State Government shall be reviewed at intervals of not more than six months by the Government who made the order and upon such review that Government shall decide whether the order should be continued or cancelled."

3. What has to be seen in such cases therefore is whether the Government had, in fact, within that period of not more than six months reviewed the case and come to a decision whether the order of detention was to continue or was to be cancelled.

4. In the counter affidavit filed by Prem Kumar, Deputy Secretary, Government of Uttar Pradesh stated In para 7, among other things :

"The case of Shri Nandan Singh was also reviewed earlier than July 27, 1963 on January 31, 1963. At the time of this review his representation dated November 15, 1962 was also considered and the same was rejected and he was informed accordingly."

5. This confirmation therefore amounted to this that on the 31st of January, 1963, the case of the applicant was reviewed and a decision taken. Apart from this review, the representation of the applicant was all considered at the same time and this was also rejected. The information which was sent to the applicant was with regard to the rejection of his representation and not with regard to the review of his case. We have looked into the original file relating to the case of the applicant and we have found that on the 31st of January, 1953 there was a full review of the case of the applicant and a definite decision was taken that his detention was to continue. Upon these facts there can be no doubt that the case of the applicant was reviewed on the 31st of January, 1963 and also on the 29th of July, 1963. Thus there was a review each time at intervals of not more than six months.

6. There is no provision of law directing the State Government to communicate the result of siren review to the detenu and therefore it cannot be said that on the mere

ground that no specific information of the review on the 31st of January, 1963 was communicated to the applicants, his detention became illegal but it is definitely advisable that the result of each review should be communicated to the detenu because he is vitally interested in that order so that he may know that his case is being reviewed according to law.

7. The second contention on behalf of the learned counsel for the applicant was that under Article 166 of the Constitution every action of the Government must be expressed in the name of the Governor and the order continuing the detention of the applicant should therefore also be in the name of the Governor. The contention of the learned counsel is not applicable to this case as sub-rule (9) of Rule 30A of the Defense of India Rules, 1962 does not require any formal expression of the decision. All that is necessary is that the Government should decide whether the original order of detention should continue or it should be cancelled. If it had been necessary to "express" it is an order that the proposed Article would have become applicable but where only a decision has to be taken and no order has to be formally expressed the Article does not apply.

8. The last contention raised by the applicant himself was that the order must be communicated to the person concerned otherwise it is not an order at all. This argument also suffers from the same defect, to the case of review no order need be passed. Undoubtedly if an order addressed to some person were required that order would have to be communicated to the person concerned but where no order is required to be passed under the law and the Government is required only to come to a decision, then that argument has no application.

9. In all these circumstances, we see no force in this petition and it is accordingly rejected.

Petition rejected.